

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

CRESTWOOD MANAGEMENT,)	
LLC, SUNSET INTIMATES)	
GROUP, INC., and REGINALD)	
S. HOWIE,)	
)	
Plaintiffs,)	
)	
v.)	CV422-291
)	
CLAYTON FERGUSON, SIMPLI)	
TRADING, INC., and SIMPLI)	
ASSETS, LTD.,)	
)	
Defendants.)	

ORDER

The Court previously directed unrepresented Defendants Simpli Trading, Inc. and Simpli Assets, Ltd., to retain counsel. *See* doc. 58 at 3-4. The two entity defendants were expressly warned that failure to retain counsel by the deadline could subject them to default. *Id.* Their deadline for compliance has expired, no counsel has appeared on their behalf, and they have not otherwise responded to the Court's Order. *See generally* docket. The Court's warning was no idle threat.

As the prior Order explained, *see* doc. 58 at 2-3, Simpli Trading, Inc. and Simpli Assets, Ltd., as entities, cannot appear in this action *pro se*.

It is well-established that “a corporation is an artificial entity that can act only through agents, cannot appear *pro se*, and must be represented by counsel.” *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985). This rule reflects the “ancient common law tradition” that a corporation can only appear in court by an attorney. *Beaudreault v. ADF, Inc.*, 635 F. Supp. 2d 121, 121 (D.R.I. 2009) (citing *Osborn v. Bank of the United States*, 22 U.S. 738, 830 (1824)). The Supreme Court has recognized that the “rule applies equally to all artificial entities.” *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02 (1993); *see also Harrison v. Wahatoyas, L.L.C.*, 253 F.3d 552, 556 (10th Cir. 2001) (“[A] corporation or other business entity can only appear in court through an attorney and not through a non-attorney corporate officer appearing *pro se*.”); *Gilly v. Shoffner*, 345 F. Supp. 2d 563, 566-67 (M.D.N.C. 2004) (“[A] limited liability company can appear in court only through a licensed attorney because it is a business entity.”).

As warned, entry of default against Defendants Simpli Trading, Inc. and Simpli Assets, Ltd., is now appropriate. *See* doc. 58 at 2-3. This Court is authorized to impose sanctions on a party that fails to obey its orders. *See* Fed. R. Civ. P. 16(f)(1)(C); Fed. R. Civ. P. 37(b)(2)(A)(ii)-(vii).

Rule 37(b)(2)(A), in pertinent part, authorizes the Court to “render[] a default judgment against the disobedient party.” Fed. R. Civ. P. 37(b)(2)(A)(vi); *see also CNH Capital America, LLC v. Southeastern Aggregate, Inc.*, 2009 WL 2391242, at *2 (S.D. Ga. Aug. 4, 2009) (discussing this Court’s authority to enter default against a party that fails to obey its orders). “[T]he failure of an artificial entity to obtain counsel, in violation of a court order or rule to do so, has repeatedly been held to support default judgment, even absent violations of other rules or orders.” *CNH Capital America*, 2009 WL 2391242, at *2 (quoting *American Resources Ins. Co. v. Evoleno Co.*, 2008 WL 4701350, at *3 (S.D. Ala. Oct. 23, 2008)) (internal quotation marks omitted).

Additionally, some district courts have recognized that an entity’s failure to obtain counsel is a failure to “otherwise defend” under Rule 55. *See PBS&J Constructors, Inc. v. I.L. Fleming, Inc.*, 2015 WL 7779214, at *2 (N.D. Ga. Dec. 2, 2015); *Ramb v. Paramatma*, 2021 WL 9349985, at *1 (N.D. Ga. Dec. 8, 2021). Federal Rule of Civil Procedure 55(a) provides that, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead *or otherwise defend*, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed.

R. Civ. P. 55(a) (emphasis added). As the Northern District of Georgia explained, the Rule contains an “embedded principle . . . that when a party fails to defend against claims asserted, the defendant is deemed to have abandoned their right to defend. This principle applies where a defendant entity chooses to abandon the defense of a claim by not retaining counsel to replace counsel originally retained.” *PBS&J Constructors*, 2015 WL 7779214, at *2.

Under either theory, entry of default is appropriate. The Court is empowered to direct entry of default. *See Allstate Prop. & Cas. Ins. Co. v. Haslup*, 2012 WL 12953465, at *6 (N.D. Ga. Jan. 12, 2012) (“A court has the power to enter default under Rule 55(a).”); *Bakewell v. Fed. Fin. Grp., Inc.*, 2007 WL 4079446, at *1 (N.D. Ga. Oct. 31, 2007) (directing entry of default against entity for failing to comply with its order to retain counsel). Therefore, the Clerk is **DIRECTED** to enter default against Defendants Simpli Trading, Inc. and Simpli Assets, Ltd.¹ The Clerk is

¹ “The entry of default (and thus the decision to set aside or to leave in effect such an entry) constitutes a pretrial matter that does not dispose of any claim or defense; as a result, courts have treated motions of this sort as subject to disposition by a magistrate judge under 28 U.S.C. § 636(b)(1)(A).” *J & J Sports Prods., Inc. v. Martinez*, 2013 WL 2147790, at *1 n. 2 (M.D.N.C. May 16, 2013) (citing *Bailey v. United Airlines*, 279 F.3d 194, 204 (3d Cir.2002); *L & M Cos., Inc. v. Biggers III Produce, Inc.*, 2010 WL 1439411, at *8 & n. 3 (W.D.N.C. Apr. 9, 2010)).

also **DIRECTED** to lift the stay imposed by the prior Order. *See* doc. 58 at 4. Plaintiffs and Defendant Clayton Ferguson, who is proceeding *pro se*, are **DIRECTED** to confer and submit a Joint Status Report within 30 days from the date of this Order, utilizing the Post-Discovery Status Report Form for Judge Baker's cases available on the Court's website under "Forms." At the time this case was stayed, discovery had closed. *Compare* doc. 52 at 2 (February 21, 2024 discovery deadline) *with* doc. 58 (Order entered February 28, 2024). Therefore, the parties' Joint Status Report should propose a deadline for civil motions. If any party seeks to reopen discovery, they must file a motion. *See, e.g.,* Fed. R. Civ. P. 16(b)(4).

The Clerk is **DIRECTED** to send a copy of this Order to Defendants via email to Claytonferguson06@gmail.com, Clayton@simpli.company, and Jeremy@simpli.company. *See* doc. 55 at 1. The Clerk is further **DIRECTED** to send a copy of this Order via mail to:

Simpli Trading, Inc. and Simpli Assets, Ltd.
c/o Jeremy Campos
1730 Stephens Street
Vancouver, BC Canada V6K3V6

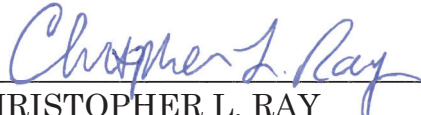
Simply Trading, Inc.
2943 Parkway Blvd., PMB 70
Salt Lake City, Utah 84119

Simply Trading, Inc. and Simpli Assets, Ltd.
5307 Victoria Drive, #691
Vancouver, BC V5P3V6

Simply Assets, Ltd.
Suite 2600
Three Bentall Centre
595 Burrard Street
Vancouver, BC V7X1L3

See doc. 55 at 1; doc. 13 at 4.

SO ORDERED, this 5th day of April, 2024.



CHRISTOPHER L. RAY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA